

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 30TH MAY 2007 / 9TH JYAISHTA 1929

Crl.MC.No. 1733 of 2007()

AGAINST THE ORDER DATED 03/04/2007 IN CRMP.947/2007 IN
CRA.262/2007 of SESSIONS COURT, TRIVANDRUM
.....

PETITIONER: APPELLANT

TAHA TMS, CHEELANTHIMUKKU,
SULAIMAN THERUVU, VALLAKADAVU,
THIRUVANANTHAPURAM.

BY ADV. SRI.J.HARIKUMAR
SRI.SUMAN CHAKRAVARTHY
SRI.HARIKUMAR.S.
SMT.K.R.RIJA
SRI.YESUDASAN VARGHESE

RESPONDENTS:

1. STATE OF KERALA, REP. BY ITS
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.
2. BABU SURESH, IIR, NANADANAM,
THIRUPURAM VILLAGE, THIRUPURAM P.O.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 30/05/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J

Crl.M.C.No1733. of 2007

Dated this the 30th day of May, 2007

ORDER

The petitioner has been found guilty, convicted and sentenced in a prosecution for the offence punishable under Section 138 of the N.I Act. He has preferred an appeal. The appellate court has admitted the appeal, but has directed suspension of the sentence subject to conditions. Inter alia it has been directed that the petitioner must deposit an amount of Rs.50,000/- within a period of two months. The period of two months expires on 03.06.2007. The petitioner has come to this Court raising the grievance that the condition imposed is onerous.

2. The judgment of conviction is not produced. No arguments are seen advanced to urge that the petitioner/accused has a convincing case to be advanced in appeal. Reliance is placed on the decision in **Dilip v. Kotak Mahindra Co. Ltd.** [2007(2) KLT 488 S.C]. It is contended that the learned Magistrate has not conducted any enquiry on the question of the ability/capacity of the petitioner to pay the amount of compensation.

3. I do take note of that the learned Magistrate has indulgently imposed only the substantive sentence of simple imprisonment for one year and had directed payment of an amount of

Rs.4,87,000/- as compensation. Leniency is seen shown. I find no merit in the grievance that a separate enquiry into the means/ability of the petitioner has not been conducted. The finding recorded by the court evidently implies that the petitioner is legally liable to pay the amount and that the cheque has been issued for the discharge of such liability.

4. I am not in these circumstances persuaded to interfere with the very reasonable condition imposed by the learned Sessions Judge for suspension of the sentence. The learned counsel for the petitioner finally agrees to pay the amount of Rs.25,000/- within a period of 30 days and the balance amount within a further period of 30 days. The learned counsel for the petitioner submits that such an arrangement will help the petitioner to avoid incarceration in prison before his appeal is taken up for consideration.

5. In the result, this Crl.M.C is, allowed in part. The condition imposed is modified. Further time is granted for payment of the amount. The petitioner shall deposit an amount of Rs.25,000/- (Rupees Twenty five thousand only) within a period of 30 days from this date. If he so deposits the amount, he shall have further time of 30 days to pay the entire balance amount. If the petitioner is unable to raise the balance amount of Rs.25,000/-, he shall, within 30 days, make an application to the learned Sessions Judge for an early

disposal and the learned Sessions Judge must in that event dispose of the appeal itself within a further period of 30 days.

(R.BASANT, JUDGE)

rtr/-